

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

FILED

CLERKS OFFICE

2005 FEB 16 P 3:13

BERNARD MACINNIS, Administrator of) the ESTATE OF CHRISTOPHER MACINNIS) Plaintiff)) v.)) WALSH BROTHERS, INC., McNAMARA/) SALVIA, INC. and) OCEAN STEEL & CONSTRUCTION, INC.) Defendants)	U.S. DISTRICT COURT DISTRICT OF MASS) C.A. No.: 05-10222WGY)
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**DEFENDANT, WALSH BROTHERS INCORPORATED'S, MOTION
TO REMAND CASE TO MIDDLESEX SUPERIOR COURT**

NOW COMES the defendant, Walsh Brothers Incorporated, and hereby moves this Honorable Court to remand the above-referenced matter to the Middlesex County Superior Court. As grounds, the defendant states the following:

1. This is an action for wrongful death arising out of a construction accident.
2. The plaintiff is a New Hampshire resident.
3. The defendant, Walsh Brothers, is a Massachusetts corporation.
4. The defendant, McNamara Salvia, is a Massachusetts corporation.
5. The defendant, Ocean Steel, is a Canadian corporation.
6. After receiving the plaintiff's Complaint and Summons, the defendant, Walsh Brothers, moved to remove this matter to the federal court pursuant to 28 U.S.C. §§ 1441(a), 1441(b) and 1446..

7. Subsequent to the notice of removal, the defendant conferred with plaintiff's counsel, Attorney Paul Kenney, regarding the appropriateness of the removal pursuant to 28 U.S.C. § 1441(b).

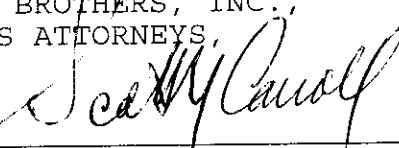
8. Pursuant to 28 U.S.C. § 1441(b), removal to the federal court is not appropriate where a defendant, properly served, resides or maintains a principal place of business in the state where the original action was filed.

9. Under the circumstances, the notice of removal is not appropriate where both Walsh Brothers and McNamara Salvia are corporate citizens of Massachusetts, the state where the plaintiff filed is original complaint.

10. the original State Court Action was filed in the Middlesex Superior Court and assigned to docket number 04-04250-J.

WHEREFORE, and for the foregoing reasons, the defendant respectfully requests that this Honorable Court remand this action to the Middlesex County Superior Court in Cambridge, Massachusetts.

Date: 2/15/05

THE DEFENDANT,
WALSH BROTHERS, INC.,
BY ITS ATTORNEYS,

Anthony M. Campo, BBO# 552093
Scott M. Carroll, BBO# 640852
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(d) I, Scott M. Carroll, do hereby certify that a copy of the foregoing documents have been served first-class postage prepaid on all parties or their representatives in this action as listed below:

Counsel for the Plaintiff:

Paul F. Kenney, Esq.
Kenney & Conley, P.C.
100 Grandview Rd., Ste. 218
P.O. Box 9139
Braintree, MA 02184

Counsel for McNamara/Salvia, Inc.:

David J. Hatem, Esq.
Jay S. Gregory, Esq.
Donovan & Hatem
World Trade Center East
Two Seaport Lane, 8th Floor
Boston, MA 02110

Defendant, Ocean Steel & Construction, Inc.:

Ocean Steel & Construction, Inc.
606 Chelsea Drive
St. John, New Brunswick Canada

SIGNED UNDER THE PENALTIES OF PERJURY THIS DAY OF

1 February, 2005. P

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